IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

OP.No. 24590 of 1998(B)

PETITIONERS:
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1. **A.P. BALAKRISHNAN,**
S/O. AP. NARAYANAN,
ATTASSERY PURAKKAL, P.O. CHOORAKODE,
VALLAPPUZHA, PALLAKAD. NOW WORKING AS
OPERATOR, KERALA WATER AUTHORITY,
P.W.S.S.S. SECTION, MALAMPUZHA, PALAKKAD.

2. **V. SREEDHARAN, S/O. P.RAMAN NAIR,**
VETTATH HOUSE, P.O. KOODALLUR,
VIA KUMBIDI, PALAKKAD WATER AUTHORITY,
P.H. SECTION NO. 1, SHORNUR.

3. **GOWRI SANKARAN, S/O. K. BHASKARAN,**
PANCHENAKOLAMBA HOUSE, P.O. OLASSERI,
KOTTAMBU, PALAKKAD, NOW WORKING AS OPERATOR
KERALA WATER AUTHORITY, PH SECTION, CHITTUR.

4. **M.SANKARAN (S/O. MADHAVAN), ANAMARI HOUSE,**
P.O. ERATTAKULAM, VIA ANCHUMOORTHH, PALAKKAD,
NOW WORKING AS FITTER, KERALA WATER AUTHORITY,
PH SECTION, ALATHUR.

5. **M.K. RAMAKRISHNAN, S/O. KUTTA, OURPADAM HOUSE,**
KARIMBA P.O., MUNNEKRA, NOW WORKING AS FITTER,
KERALA WATER AUTHORITY, PH SECTION, ALATHUR.

6. **K.VASUDEVAN, S/O. KRISHNAN, VALIYAPARAMBIL HOUSE,**
P.O. MANNAMPATTA, PULASSERI, PALAKKAD NOW WORKING
AS OPERATOR, KERALA WATER AUTHORITY, PH SECTION,
PATTAMBI.

7. **T.GOPALAN, S/O. KARIKKA, THERUMARIL HOUSE,**
P.O. MANNAMPATTA, PULASSERI, PALAKKAD, NOW
WORKING AS OPERATOR, KERALA WATER AUTHORITY,
PH SECTION, PATTAMBI.

8. **K. SUBRAMANIAN, S/O. A.KUNCHAN,**
KORATHODI HOUSE, P.O. KADUKKAMKUNNAM,
PALAKKAD, NOW WORKING AS OPERATOR, KERALA WATER
AUTHORITY, PWSS SECTION, MALAMPUZHA.

BY ADV. SRI.TKM.UNNITHAN

OP NO. 24590/1998 B

RESPONDENTS:
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1. **THE STATE OF KERALA, REP. BY THE CHIEF SECRETARY GOVT. OF KERALA, TRIVANDRUM.**

2. **KERALA WATER AUTHORITY, REP. BY THE MANAGING DIRECTOR, KERALA WATER AUTHORITY, TRIVANDRUM.**

3. **THE SECRETARY, IRRIGATION, GOVT. OF KERALA, GOVT. SECRETARIAT, TRIVANDRUM.**

4. **THE EXECUTIVE ENGINEER, KERALA WATER AUTHORITY, PH DIVISION, PALAKKAD-1.**

5. **THE EXECUTIVE ENGINEER, KERALA WATER AUTHORITY, PH DIVISION, SHORNUR, PALAKKAD DIST.**

GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN
ADVS. SRI.C.RASHEED,
SRI.C.UNNIKRISHNAN, SC, KWA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON 07/11/2007 DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 43283/1998 IN OP NO. 24590/1998 B.

DISMISSED

07/11/2007. SD/- THOTTATHIL.B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE COMMON JUDGMENT DT. 19/09/90 BY THE SUPREME COURT OF INDIA IN WPC NO. 112/90 AND OTHER CONNECTED CASES.

EXT.P2. COPY OF THE GOVT. ORDER DT. 5/1/91 BY THE GOVT. OF KERALA.

EXT.P3. COPY OF THE ORDER DT. 2/5/91 BY THE KWA.

EXT.P4. COPY OF THE ORDER DT. 18/3/93 BY THE KERALA WATER AUTHORITY.

EXT.P5. COPY OF THE ORDER DT. 25/5/98 BY THE MANAGING DIRECTOR OF KERALA WATER AUTHORITY.

EXT.P6. COPY OF THE GOVT. ORDER DT. 21/10/05 PRODUCED ALONG WITH ADDITIONAL AFFIDAVIT DT. 4/12/2005.

EX.T.P7. COPY OF THE PROCEEDINGS DT. 28/10/2005 PRODUCED ALONG WITH ADDITIONAL AFFIDAVIT DT. 4/12/2005.

EXT.P8. COPY OF THE PROCEEDINGS DT. 14/1/2004 PRODUCED ALONG WITH ADDITIONAL AFFIDVIT DT. 4/12/2005.

RESPONDENT'S EXHIBITS NIL.

True copy

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THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.24590 OF 1998

Dated this the 7th day of November, 2007

JUDGMENT

The eight petitioners joined as C.L.R. workers in the Public Health Engineering Department under the State Government between 12.5.1980 and 26.5.1983, i.e., before the constitution of the Kerala Water and Waste Water Authority, with effect from 1.4.1984, which later on, came to be the Kerala Water Authority, the evolution of which is traced in para 2 of the judgment of the Apex Court in **Jacob M. Puthuparambil and Others** v. **Kerala Water Authority & Others** [AIR 1990 SC 2228].

2. Petitioners seek a direction to the Water Authority to absorb them into regular service of the Water Authority in the light of the directions contained in the aforesaid judgment, without insisting on possession of qualification referred to in Ext.P5. They also seek that Exts.P5, P6 and P7 be quashed.

3. Ext.P5 has been issued by stating that the absorption is dependent on possession of requisite qualification. Thereafter, during the pendency of this writ petition, Government have issued Ext.P6 by granting absorption to the petitioners with prospective effect, without affecting the seniority of PSC hands. The petitioners contend that such action is in violation of the judgment in **Jacob**'s case (supra) and they are entitled to the benefit of that judgment, without being diluted as per the impugned orders.

4. In **Jacob**'s case, adverting to the pleadings of the parties, the Apex Court noticed that the stand of the State Government through its counsel is that the question of regularisation of the services of ex-PHED employees now borne on the establishment of the Authority is exclusively within the purview of the Authority and the State Government has no role to play. The Apex Court, therefore, noticed that the said stand means that it was wholly unnecessary on the part of the Authority to make the recommendation it made by the resolution of 30th January, 1987

to the State Government for the regularisation of the ex-PHED employees serving on its establishment on that date. Resultantly, their lordships noticed that at present it is for the Authority and the Authority alone to regularise the services of such employees without waiting for a nod from the State Government. Answering the issues raised in **Jacob**'s case, it was specifically directed in para 17 (1) of that judgment that the authority will, with immediate effect, regularise the services of all ex-PHED employees as per its Resolution of 30th January, 1987 without waiting for State Government approval. The directions ended by stating that the order being issued by the Apex Court will regulate the services not only of the parties to the present petitions, but also all others similarly situated, including those who may be parties to other proceedings pending indifferent Courts. In the light of the above, it is impossible to make any classification or to postpone the date of benefit of the judgment in **Jacob**'s case.

In the result, the decisions under challenge, to the extent the impugned, are quashed and it is directed that the petitioners shall be absorbed into regular service in the light of the direction in the judgment in **Jacob**'s case, without insisting on possession of qualifications referred to in Ext.P5 and such absorption shall be without the restrictions imposed as per Exts.P6 and P7. This means that their absorption shall not be confined to be prospective, but shall be by giving full effect to the directions in **Jacob**'s case (supra). Consequential orders shall be issued within two months from the date of receipt of a copy of this judgment. The writ petition is allowed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.24590 OF 1998

JUDGMENT

NOVEMBER, 2007.

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